Supreme Court, U. S.
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No. 79-299

In the Supreme Court of the United States

OCTOBER TERM, 1979

JAMES ROBERT BURRUS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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Following a jury trial in the United States District Court for the District of Arizona, petitioner was convicted on 14 counts of embezzlement from a bankrupt estate, in violation of 18 U.S.C. 153, and interstate transportation of stolen securities, in violation of 18 U.S.C. 2314. He was sentenced to a term of seven and a half years' imprisonment, to be followed by five years' probation, and was fined $50,000 (Pet. App. 19-22).

Petitioner appealed his conviction to the United States Court of Appeals for the Ninth Circuit. On May 16, 1979, the government moved to dismiss the appeal for lack of prosecution and because petitioner had fled the jurisdiction of the court. On June 19, 1979, the court of appeals granted the government's motion (Pet. App. 18). Petitioner filed an untimely response to the government's motion, which the court of appeals construed as a motion for rehearing and denied (Pet. App. 17).

Petitioner concedes that he is a fugitive (Pet. 10-11) but nevertheless claims (Pet. 9-16) that the court of appeals should not have dismissed his appeal. As a fugitive, however, petitioner is not entitled to call upon the court of appeals (or this Court) for determination of his claims, and dismissal of the appeal was within the court of appeals' admitted discretion (Pet. 9-10). See *Molinaro* v. *New Jersey*, 396 U.S. 365 (1970), and cases there discussed.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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[1]Because dismissal of the appeal was proper following petitioner's flight, there is no need for this Court to consider petitioner's additional argument (Pet. 8-9) that his failure to prosecute the appeal was caused by the destruction of the court reporter's transcript of the trial. In any event, we note that petitioner had failed to comply with repeated orders to transmit the record to the court of appeals, the latest of which required transmittal by April 5, 1979 (Pet. 6), and the transcript was not destroyed until April 15, 1979 (Affidavit of Florence Carcia, Court Reporter, attached to petitioner's motion for extension of time in the court of appeals).

Nor is there merit to petitioner's argument (Pet. 12-16) that dismissal of the appeal denies him due process of law. See *Molinaro* v. *New Jersey*, *supra*. Furthermore, as petitioner recognizes (Pet. 15), he may move for reinstatement of his appeal if and when he surrenders himself or is apprehended.

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